

IN THE MATTER OF	:	BEFORE THE
YMCA OF CENTRAL MARYLAND	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 06-037V

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DECISION AND ORDER

On November 6, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of YMCA of Central Maryland, LLC, Petitioner, for a variance to reduce the 30-foot use setback from a public street right-of-way to 9 feet for parking to be located in an R-SA-8-I (Residential – Single Attached – Institutional Overlay) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Jason T. Vettori, Esquire, represented the Petitioner. Robert Vogel and Troy Weaver testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 4331 Montgomery Road, is located in the 2nd Election District on the north side of Montgomery Road, northwest of its intersection with Long Gate Parkway, in Ellicott City (the "Property"). The Property is identified on Tax Map 24, Block 24 as

Parcel 767.

The Property consists of about 4.64 acres and is irregular in shape. The lot has 305 feet of frontage on Montgomery Road. The east side of the Property is about 378 feet deep, while the west side is approximately 600 feet deep. The rear portion of the Property is about 475 feet wide.

The Property is currently improved with a 12,558 square foot two-story building with associated parking and loading areas. The existing building is situated in the northeast portion of the site and within 26.3 feet of the east side lot line. The Property is currently accessed from a driveway beginning in the southwest corner of the site.

The Property is generally level in front and slopes down significantly in the rear. The northwest portion of the site is wooded and contains an intermittent stream.

2. The Petitioner, the owner of the Property, proposes to expand the existing building into a three-story, 35,000 square foot facility. The new structure will be located in the center of the lot. On-site parking for the facility will consist of 218 spaces¹ to be located on all sides of the building with the exception of the northwest corner and a portion of the west side of the building. The northwest corner of the Property will contain a stormwater management facility, wooded buffer and forest conservation area. A row of parking spaces in the front of the Property will be located about 9 feet from the Montgomery Road right-of-way, and therefore will encroach 21 feet into the 30-foot use setback required by Section 113.3.E.2.c. A Type “E” landscaping screen, to consist of a combination of shade trees and shrubs, will be planted along the Montgomery Road frontage.

¹ The petition indicates that the required number of parking spaces for this facility is 273; the Petitioner proposes to locate 55 spaces on an adjoining lot owned by the Howard County public school system.

Vehicles will access the site from a private entrance road from Montgomery Road, beginning opposite Long Gate Parkway, that will run north near the east side of the Property. Three access points along this road will lead to the east side of the Property. The current access from Montgomery Road will be removed.

3. Vicinal properties include:

(a) To the north and east is an R-SC-I zoned lot that is the site of a new public school.

(b) To the south across Montgomery Road is the POR- and B-2-zoned Long Gate Shopping Center.

(c) To the west are two parcels zoned R-SA-8. The parcel fronting on Montgomery Road is improved with a single-family detached dwelling.

4. Robert Vogel, the project engineer, testified that the only other R-SA-8-I zoned property in the County is the adjoining public school site, which is about 8 acres in size. He stated that a lawn area will be provided on the west side of the proposed building to establish a buffer with adjoining residentially zoned lots. An administrative adjustment has been granted by DPZ for the structure's west side. He stated that the parking spaces and drive aisles are the minimum sizes necessary to provide safe circulation.

5. Mr. Weaver, the Executive Director of the Petitioner, testified that the national YMCA recommends that its facilities be 50,000 to 60,000 square feet in area and erected on eight or more acres of land. The Petitioner will share some of the public school facilities, such as ball fields and parking, with the adjoining school site.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find that the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property

is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

The Property is only 4.64 acres in size, which is uniquely small when compared to a typical 8-acre site for similar facilities, and when compared to the adjoining school site, which is apparently the only other R-SA-8-I zoned property in the County. In addition, the topography and stream in the northwest corner of the site restricts its buildable area. The Petitioner’s proposed development of a 35,000 square foot YMCA facility and associated drives and parking is of typical size for such an institutional use, and therefore is a reasonable and permitted use in the zone. In order to construct the facility and provide sufficient parking, however, it is necessary to encroach into the use setback. Consequently, I find that the small size of the Property, combined with the topography and stream location, are unique physical conditions that cause the Petitioner practical difficulties in complying with the setback requirements, in accordance with Section 130.B.2.a(1).

2. The proposed facility expansion development will continue a present permitted institutional use and will not change the nature of the use. While the intensity of the use will increase, its impact will be mitigated by the landscape buffering that will be installed along the road frontage. The variance, if granted, will therefore not alter the essential character of the

neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulations arises from the size and topography of the Property and the location of the stream and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The completed facility will be of typical size. The parking spaces will be located so as to minimize the impact on adjoining residential lots. The parking spaces and drive aisles are the minimum sizes necessary to provide safe circulation. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this **6th day of December 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of YMCA of Central Maryland, LLC, for a variance to reduce the 30-foot use setback from a public street right-of-way to 9 feet for parking to be located in an R-SA-8-I (Residential – Single Attached – Institutional Overlay) Zoning District is hereby **GRANTED**;

Provided, however, that the variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.

Lapse of Variance: This variance will become void unless the required permits conforming to the variance plan are obtained within two years and substantial construction in accordance therewith is completed within three years from the date hereof. If the variance is granted to allow recording of a final plat, the variance will become void unless the plat is recorded in the Land Records of Howard County within three years from the date hereof. See Section 130.B.2.e.